

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRENT MOSES,

Defendant and Appellant.

B265795

(Los Angeles County
Super. Ct. No. YA012802)

APPEAL from an order of the Superior Court of Los Angeles County,
Mark S. Arnold, Judge. Affirmed.

Patricia S. Lai, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

On March 2, 1993, defendant and appellant Brent Moses pled guilty to first degree residential burglary (Pen. Code, § 459)¹ and was sentenced to three years probation. In April 1995, Moses violated probation and was sentenced to prison for one year and four months.

Following the enactment of Proposition 47, Moses petitioned on April 29, 2015, for resentencing of this offense. On April 29, 2015, the trial court denied Moses's petition, stating that Moses had been convicted of robbery, an offense which rendered him ineligible for Proposition 47 relief. Moses filed a timely notice of appeal on May 21, 2015.

We appointed counsel to represent Moses on appeal. After reviewing the record, counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441. We directed counsel to send the record on appeal and a copy of the opening brief to Moses, and notified defendant he had 30 days within which to personally submit any contentions or issues that he wished us to consider. No supplemental brief was filed.

Proposition 47, enacted by voters on November 4, 2014 and effective the following day, reduces certain drug and theft offenses to misdemeanors unless committed by ineligible defendants. (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.) Proposition 47 provides, in pertinent part: “(a) A person currently serving a sentence for a conviction . . . of a felony . . . who would have been guilty of a misdemeanor under the act . . . had this act been in effect at the time of the offense may petition for a recall of sentence . . . to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.” (§ 1170.18, subd. (a).)

¹ All further statutory references are to the Penal Code unless otherwise specified.

The augmented record on appeal filed by Moses on February 22, 2016, appears to indicate that he was convicted of burglary in March 1993 (which was the subject of his Proposition 47 petition), and that the robbery conviction referred to by the trial court was a prior conviction for robbery that Moses sustained in October 1989. Although the trial court apparently mischaracterized Moses's Proposition 47 petition as seeking relief for the ineligible offense of robbery, Moses's Proposition 47 petition was actually seeking relief for the equally ineligible offense of burglary which, like robbery, renders a defendant ineligible for Proposition 47 relief because neither crime is an offense covered by section 1170.18. (See *People v. Zapien* (1993) 4 Cal.4th 929, 976 [appeal court reviews trial court's ruling, not its reasoning, and will affirm if that ruling was correct on any ground].)

We are satisfied that appellate counsel has fully complied with her responsibilities and that no arguable appellate issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278 [120 S.Ct. 746]; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The trial court's order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

HOGUE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.